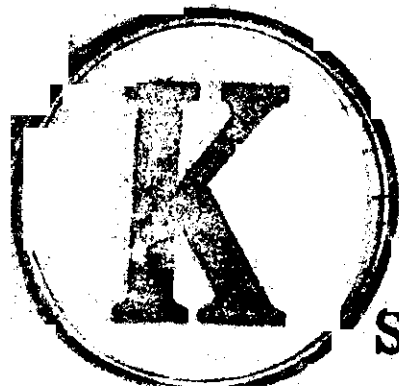


1944.

File No. D. Leases

Legal Dept.

1/44



A

BRANCH

Subject.— Opinions in connection
with Leases.

1/8

File No.

D. Leases 1/44

Gen. 1944.

109-A

C O N T E N T S.

Legal Department File No. O. Leases /1944.

Sr. No.	R.I./-	O.No.	Subject	Pages
0.	Leases 1944.		Opinions inconnection with the Leases -	
1.		<u>514</u> 21.1.1944	Orders in connection with the agreements for onstructing approach Roads between private Bungalows and the Govt. Road.	1
2.		<u>2137</u> 22.3.44	The Jalgaon Liquor Warehouse Building.	3
3.		<u>3752</u> 24.5.44	repairs to Liquor Warehouse at Jalgaon.	5-8 5880
4.		<u>3957</u> 2.6.44	Whether landlord of the Jalgaon Liquor warehouse buildings are bound to carry out certain works-	9
5.		<u>6423</u> 13.9.44	When a permission is given to a construct an approach road on Govt. land it is necessary to levy a nominal fee to prove ownersship.-	11
6.		<u>387-conf1</u> 23-12-44	amendment of the lease with M/s Kiledar for purpose of a dairy farm is possible.	13.

Office of the R.L.A.

The R.L.A. in his opinion No. 821 dated 13-3-1918 had advised that a levy of a nominal yearly fee might be a good precaution against the agreement being forgotten but is not essential. But Government thought that the imposition of an annual fee would cause more ^utrouble than than gain and passed orders not to levy any fee. It is presumed that an agreement under rule 54 of the Land Revenue Rules is always taken in every case where the permission to construct an approach road on Government land is given. If so, even without levy of rent, the agreement would suffice to safeguard the prescriptive rights of Government to the land. The question whether any rent should be levied and if so, whether nominal or full is for the P.W.D. to decide. So far Government Order No.A. 4852 dated 6-5-1918x has not been modified. And agreements in the form prescribed by Government from time to time⁺ appear to have been taken pursuant to those orders (Vide G.R., P.W.D. No. 1 -4872/36 dated 11-8-1941). So in the case of approach roads in respect of which such agreements have already been taken without providing for charging of any rent no rent can be charge and recovered from the first week of January 1944 as proposed by the Secretary, P.W.D. unless such agreements are amended by consent so as to provide for levying a certain fixed rent for the use of the Government land. In the case of agreements to be taken in future the rent can be charged provided the agreements so provide.

Sd/-P.N.M.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 514 dated the 21st January 1944.

M.R.D.
11-7-56
C:4

Letter

No. 2137
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 22nd March 1944.

To

The Commissioner of Excise
Bombay.

Sub:- The Jalgaon Liquor warehouse Building.

Sir,

With reference to your letter No. 107/44, dated the 26th February, 1944, on the subject noted above, I have the honour to observe as under:-

Under section 44 of the Transfer of Property Act, 1882 transfer by co-owner is competent and on such transfer the transferee stands in the shoes of the transferor. The other co-owners may however be consulted before Government attorn to the Transferor Mr. Sheth.

Under section 106 of the same act on an assignment of the reversion the assignee succeeds to the rights and liabilities of the lessor in respect of covenants which run with the land. The assignee takes the benefit of the lessee's covenants e.g. topay rent, and the burden of lessor's covenants e.g. for quiet enjoyment. But the liabilities of the lessor continue after the assignment and the lessee is given the option of holding either the lessor or the assignee liable for covenants running with the land.

The copy of the lease accompanying your letter under reference is returned herewith.

Your obedient servant,

Sd/-P.N.M.
20.3.44
Remembrancer of Legal Affairs.

Through

The Revenue Department.

M.R.D.
12-7-56
C.4

L.D.R.I. No. 4515,
dt. 22nd May, 1

Submitted.

Please see R.D. on at p. 113 ante.

This is another reference from R.D. regarding repairs to Liquor Warehouse at Jalgaon (The other one, L.D.R.I.No.4479 dated 20th May is submitted separately). ~~The relevant facts are briefly as follows:-~~ Lessors of the Liquor Warehouse at Jalgaon did not carry out repairs as stipulated in the lease.

It appears that in 1941 a notice stating the works to be carried and the approximate costs was served on the lessors. As there was subsequently some change in the works of repair a fresh notice was served but the costs were not intimated. (vide para 3 of the letter from Commissioner of Excise at p-111 ante). Govt. under its letter No.5260-C/33 dated the 15th December 1943 authorised the Commissioner of Excise to incur an expenditure of Rs.2863/- on those repairs as the lessors refused to carry out repairs. The Commissioner of Excise in his letter at p.111 now requests Govt. to sanction an amount of Rs,3,690 as the previous amount is not sufficient. The Commissioner does not propose to serve any further notice on the lessors. R.D. proposes to authorise him to spend the required amount. The papers have been forwarded to R.L.A.

It is not clear on what legal point R.L.A.'s opinion is sought. Papers are probably referred to R.L.A. to see if there is any legal objection as Govt. is sanctioning extra amount for the repair works. This, however, appears to be a matter for the administrative Department concerned, and it may sanction the required amount. Govt. will be entitled to get the amount spent on the repairs by way of deductions from Rent under clause 18 of the lease (Pl. see cl.18) and under sec 108 (f) of the T.P. Act.

As regards meeting of the expenditure from the amount accruing an account of the imposition of the penalty of Rs. 2 per diem in accordance with clause 22 of the lease, the orders are identical with those

the orders are identical with those in the previous R.D. letter No. 5260-c/33 dated 15th December 1943. No fresh question, therefore, arises in this respect.

The owners have been given notice to carry out the works of repair in 1943. There is no change in repairs to be carried out. Consequently no fresh notice will be required. (See R.L.A.'s opinion 8850 dated 1st Dec. 1943).

Sd/23-5

S.A.S.

In view of the para 3 of the letter of the Commr. of Excise at p.111 ante no fresh notice to the landlords appears necessary.

Sd/-R.T.K.
23-5

R.L.A. P.N.M. 23/5

Office of the R.L.A.

In view of para 3 of the letter of the commissioner of Excise at p.111 ante no fresh notice to the landlords appears necessary.

Sd/-P.N.M.
24-5

Remembrancer of Legal Affairs.

M-R-B: U.R. to R.D. through F.D. No. 3752 dated the 24th May, 1944.

M.R.D.
12-7.56
C .4

L.D.R.I.No.4479
d/- 20th May 1944.

Submitted.

Please see the letter from the Commr. of Excise at p.1 ante. R.L.A. is requested to advise whether the landlords of the Jalgaon Liquor Warehouse buildings are bound to carry out the following works.

(i) Construction of small compound walls on both sides of the main gate of the warehouse compound joining compound wall of the Municipal cattle shed to the south and the compound wall of Mr. Jagannath Ganeshrām's estate to the north.

(ii) Repairs to the foundations of some of poles supporting the wire fencing to the east of the warehouse strong room which have fallen down owing to the Nala water dashing against the foundations of poles.

With reference to the first item, it is seen that the lease agreement makes no provision. The rights and liabilities of the lessor and the lessee apart from those contracted by the parties and apart from usage, are contained in sec. 108 of the T.P. Act. The construction of the compound wall does not fall under any of the clauses of sec. 108. Neither can there be any usage requiring the the landlords to erect compound wall. The landlords of the warehouse cannot therefore, be compelled to erect the required walls.

As regards(ii); under clause 10 of the lease, the landlords have agreed to put up a wire fencing around the whole area of the leased land. There is however no express agreement as to repairs of this fencing or the poles supporting it. Sec.108(f) which makes provision regarding repairs will have no application to the present case as., the lessor is not bound by the agreement to do these repairs. "The

lessor is under no liability to repair in the absence of an express contract making him liable. Indeed sec. 108(m) implies that the liability is that of the lessee" (Plsee Mulla on T.P.Act.P.607). In view of this it appears that the landprds cannot be calld upon to do the required repairs.

Sd/-
23-5

S.A.S. In the absence of any provision in the lease the landlords would not be liable to carry out items (iii) and (iv)

Sd/-25-5

A.L.R. I agree.

Reply may be SAS's note

Sd/-
25-5

R.L.A.

Sd/-P.N.M.
31-5

M.R.D.
12-7-56
C4

Office of the R.L.

In the absence of any provision in the lease
the landlords would not be liable to carry out items
(iii) and(iv)

Sd/-

1.6.44

Remembrancer of Legal Affairs.

U.E. to A.D.No.3957,dated the 2nd June 1944.

M.R.D.
12-7-56
C.4

The view taken in para 5 of the P.W.D. office note at page 93 ante is correct. Care should however be taken to see that despite the levy of rent the agreement should be so worded as in effect to mean a license and not a lease.

2. The view taken by R.D. at page 97 ante is correct provided the agreement is intended to operate merely as a license and not as a lease.

Sd/+P.N.M.

12-8944

Remembrancer of Legal Affairs.

M.R.D.
12-7-56
C.4

U.R. to P.W.D.No. 6423, dated the 13th September 1944.

No. amendment of the lease would be legally possible unless the lessee agrees.

2. Clause 2 of the lease provide that the lessee shall keep and maintain on the leased premises such number of cattle-in-milk as will bring the total number of such cattle within the first five years to not less than three hundred and thereafter he shall maintain not less than the said number of cattle-in milk during the remaining period of the lease and that such "cattle-in-milk" would include cattle capable of giving milk which may be dry for the time being. Clause 3 permits the lessee to keep dry cattle until such time as better Railway facilities for the transport of milk to Bombay become available. It appears from these provisions that a distinction is made between "dry cattle" and "cattle capable of giving milk which may be dry for the time being.". What exactly that distinction means is for the experts to decide. The keeping of only dry cattle would not be in compliance with clause 2 of the lease. The keeping of only cattle capable of giving milk but dry for the time being would also appear to be in non-compliance with clause 2, since presumably it is impossible to run a dairy farm with such cattle and the whole purpose of the lease is to promote the running of a dairy farm. The note of explanation is apparently intended to apply to only a small percentage of the lessees cattle but that is not made clear. It is an unfortunate definition which confuses and gives much scope for abuse of lease.

Id/-P.N.M.

22-12-44

Remembrancer of Legal Affairs.

U.R. to Reconstruction Department, No.387-Conf'l, dated the 23rd December 1944.